



KOSOVO SPECIALIST CHAMBERS
DHOMAT E SPECIALIZUARA TË KOSOVËS
SPECIJALIZOVANA VEĆA KOSOVA

In: KSC-BC-2020-06

The Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi

Before: Trial Panel II

Judge Charles L. Smith III, Presiding Judge

Judge Christoph Barthe

Judge Guénaël Mettraux

Judge Fergal Gaynor, Reserve Judge

Registrar: Fidelma Donlon

Date: 7 March 2024

Language: English

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**Public Redacted Version of
Decision on Prosecution Request to Amend the Exhibit List (F02099)**

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TRIAL PANEL II (“Panel”), pursuant to Articles 21(4)(c) and (6) and 40 of Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor’s Office (“Law”) and Rules 95(4)(c), 102(1)(b), and 118(2) of the Rules of Procedure and Evidence before the Kosovo Specialist Chambers (“Rules”), hereby renders this decision.

I. PROCEDURAL BACKGROUND

1. On 25 January 2023, the Panel issued the Order on the Conduct of Proceedings.¹
2. On 3 April 2023, trial proceedings started.²
3. On 30 May, 10 and 12 July, 25 August, 19 September, 3 November, 15 December 2023, and 15 January 2024, upon authorisation from the Panel,³ the Specialist Prosecutor’s Office (“SPO”) amended its list of proposed exhibits (“Exhibit List”).⁴

¹ F01226, Panel, *Order on the Conduct of Proceedings*, 25 January 2023, with Annex 1.

² Transcript of Hearing, 3 April 2023.

³ F01352, Panel, *Decision on Prosecution Request to Amend the Exhibit List and Related Matters* (“8 March 2023 Decision”), 8 March 2023, confidential (a public redacted version was issued on 1 November 2023, F01352/RED); F01544, Panel, *Decision on Prosecution Request to Add Five Items Relating to Expert Witness to the Exhibit List* (“23 May 2023 Decision”), 23 May 2023; Transcript of Hearing, 12 July 2023, p. 5551, line 9 to p. 5553, line 19; F01656, Panel, *Decision on Prosecution Request to Add Intercepted Communications to the Exhibit List* (“Intercepts Decision”), 7 July 2023, confidential (a public redacted version was issued on 14 November 2023, F01656/RED); F01739, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01728)* (“24 August 2023 Decision”), 24 August 2023, confidential (a public redacted version was issued on 15 November 2023, F01739/RED); F01785, Panel, *Decision on Prosecution Requests to Amend the Exhibit List (F01689 and F01747)*, 12 September 2023, confidential (“12 September 2023 Decision”) (a public redacted version was issued on 10 November 2023, F01785/RED); F01902, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01858)* (“3 November 2023 Decision”), 3 November 2023; F01995, Panel, *Decision on Prosecution Request to Amend the Exhibit List (F01844)* (“8 December 2023 Decision”), 8 December 2023, confidential (a public redacted version was issued on the same day, F01995/RED); F02044, Panel, *Decision on Prosecution Motion for Admission of Evidence of Witnesses W01163, W02144, W02749, W04230, W04445, W04489, W04576, W04739, W04741, and W04820 Pursuant to Rule 154 and Related Request*, 8 January 2024, confidential (a public redacted version was issued on the same day, F02044/RED).

⁴ F01562, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 30 May 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01662, Specialist Prosecutor,

4. On 2 February 2024, the SPO filed a further request to amend the Exhibit List (“Request”).⁵
5. On 14 February 2024, the Defence for all four Accused (collectively, “Defence”) responded jointly to the Request (“Response”).⁶
6. On 19 February 2024, the SPO replied to the Response (“Reply”).⁷

II. SUBMISSIONS

7. The SPO requests leave to amend the Exhibit List to include eight additional items identified (collectively, “Additional Documents”), consisting of: (i) [REDACTED] testimony transcripts in [REDACTED], along with associated exhibits (“Transcripts and Associated Exhibits”); (ii) one item the SPO intends to use (if authorised) during the examination of witness W01453 (“W01453’s Document”); and (iii) one additional item, of 3 pages, consisting of contemporaneous KLA documents (“KLA Documents”).⁸ The SPO submits that

Prosecution Submission of Amended Exhibit List, 10 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01669, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 12 July 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01744, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 25 August 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01802, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 19 September 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F01906, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 3 November 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F02014, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 15 December 2023, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential; F02061, Specialist Prosecutor, *Prosecution Submission of Amended Exhibit List*, 15 January 2024, with Annex 1, strictly confidential and *ex parte*, and Annex 2, confidential.

⁵ F02099, Specialist Prosecutor, *Prosecution Request to Amend the Exhibit List*, 2 February 2024, confidential, with Annex 1, confidential (a public redacted version was filed on the same day, F02099/RED).

⁶ F02120, Specialist Counsel, *Joint Defence Response to Prosecution Request to Amend the Exhibit List (F02099)*, 14 February 2024, confidential (a public redacted version was filed on 15 February 2024, F02120/RED).

⁷ F02138, Specialist Prosecutor, *Prosecution Reply Relating to its Request to Amend the Exhibit List (F02099)*, 19 February 2024, confidential (a public redacted version was filed on the same day, F02138/RED).

⁸ Request, paras 1, 6, 9, 11, 17, referring to: (i) [REDACTED]; (ii) SPOE00229777-00229840, pp. SPOE00229777-00229802/SPOE00229777-00229802-ET; and (iii) 072639-072641/072639-072641-ET. See also Annex 1 to the Request.

the Request – which, at this stage, solely concerns amendment of the Exhibit List and not admission – is relatively limited in scope, allows timely and effective Defence preparations, and concerns relevant material, which is probative of the charges.⁹

8. The Defence requests that the Panel dismiss the Request to amend the exhibit list to include W01453's Document and the KLA Documents as well as their respective translations.¹⁰ The Defence submits that the SPO has failed to provide timely notice and to show good cause justifying the late addition of the contested amendments to the Exhibit List.¹¹ The Defence does not oppose the addition of the Transcripts and Associated Exhibits to the Exhibit List.¹²

9. The SPO replies that the Response fails to establish any reason why the Request should not be granted by the Panel.¹³

III. DISCUSSION

10. Pursuant to Rule 118(2), the Panel may permit, upon timely notice and a showing of good cause, the amendment of the lists of witnesses and exhibits filed pursuant to Rule 95(4)(b) and (c). As proceedings advance, any further requests to amend the Exhibit List will be subject to greater scrutiny.¹⁴ As previously stated,¹⁵ the Panel has already permitted the SPO to add items to the Exhibit List several times and the Exhibit List is already, by any standards, voluminous. With this in

⁹ Request, paras 2, 7-11, 15. *See also* Request, paras 3-5.

¹⁰ Response, paras 2, 39.

¹¹ Response, paras 11. *See also* Response, paras 12-38.

¹² Response, para. 2.

¹³ Reply, para. 1. *See also* Reply, para. 4.

¹⁴ *See* 8 December 2023 Decision, para. 9; 3 November 2023 Decision, para. 7; 12 September 2023 Decision, para. 15, *referring to* F00727, Pre-Trial-Judge, *Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 8 March 2022, strictly confidential and *ex parte*, para. 30 (a confidential redacted version was filed on the same day, F00727/CONF/RED). *See also* Transcript of Hearing, 15 February 2023, pp. 2017-2018.

¹⁵ 8 December 2023 Decision, para. 9; 3 November 2023 Decision, para. 7; 12 September 2023 Decision, para. 16.

mind, the Panel will assess whether, at the current stage of proceedings, the SPO has provided timely notice and shown good cause for the amendment of its Exhibit List, and that no undue prejudice is caused to the Defence as a result.¹⁶ The Panel refers, in particular, to the principles set out in its 12 September 2023 Decision.¹⁷

A. TRANSCRIPTS AND ASSOCIATED EXHIBITS

11. The SPO submits that: (i) the Transcripts and Associated Exhibits are *prima facie* relevant and of sufficient importance to justify their addition to the Exhibit List; (ii) no undue prejudice would result from adding these items to the Exhibit List; (iii) the request is timely, limited in scope, and provides the Accused with sufficient notice; and (iv) the Transcripts and Associated Exhibits were disclosed to all Defence teams on 25 January 2024 pursuant to Rule 102(1)(b)(i).¹⁸

12. The Defence does not oppose the addition of the Transcripts and Associated Exhibits to the Exhibit List.¹⁹

13. As regards the timeliness of notice, the Panel observes that the Request originates from [REDACTED]'s testimony between [REDACTED] in the [REDACTED]. Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,²⁰ in particular where it [REDACTED], the Panel considers the notice provided by the SPO in respect of the Transcripts and Associated Exhibits to be timely.

¹⁶ 8 December 2023 Decision, para. 9; 3 November 2023 Decision, para. 7; 12 September 2023 Decision, para. 16. *Similarly* 23 May 2023 Decision, para. 8; Intercepts Decision, para. 10.

¹⁷ 12 September 2023 Decision, paras 15-17.

¹⁸ Request, paras 7-8.

¹⁹ Response, para. 2.

²⁰ 8 December 2023 Decision, para. 14; 3 November 2023 Decision, paras 9, 14, 20; 12 September 2023 Decision, paras 32, 38, 65, 71, 77, 88; IA019/F00006, Court of Appeals Panel, *Decision on Thaçi's Appeal against Decision on Specialist Prosecutor's Request to Amend its Exhibit List and to Authorise Related Protective Measures*, 12 July 2022, para. 21.

14. As regards good cause and the question of the relevance and importance of the Transcripts and Associated Exhibits, the Panel observes that the Transcripts and Associated Exhibits relate to a charged crime site and provide evidence concerning the presence of certain KLA members at that crime site at relevant times.²¹ In light of the above, the Panel is satisfied that the Transcripts and Associated Exhibits are *prima facie* relevant and of sufficient importance and that there is good cause for their late addition to the Exhibit List.

15. As regards prejudice, the Panel observes that the Transcripts and Associated Exhibits are relatively limited in scope and were disclosed to all Defence teams on 25 January 2024 pursuant to Rule 102(1)(b)(i).²² The Panel further notes that the photographs and sketch which have been now marked by [REDACTED] are already on the Exhibit List.²³ In addition, the Panel observes that the Defence does not oppose the addition of the Transcripts and Associated Exhibits to the Exhibit List.²⁴ Considering that the testimony of [REDACTED] in these proceedings is yet to be scheduled, the Panel is satisfied that the Defence has sufficient time to adequately prepare before the relevant witness's testimony and that the effectiveness of the rights of the Accused is being preserved. In turn, the Panel is also satisfied that no undue prejudice is caused by the addition of the Transcripts and Associated Exhibits to the Exhibit List.

B. W01453'S DOCUMENT

16. The SPO submits that: (i) W01453's Document is *prima facie* relevant and of sufficient importance to justify its addition to the Exhibit List; (ii) no undue prejudice would result from adding this item to the Exhibit List; (iii) the request

²¹ See e.g. [REDACTED].

²² Disclosure Package 1085.

²³ Exhibit List, Items 3436, 19254.

²⁴ Response, para. 2.

is timely and provides the Accused with sufficient notice and preparation time; and (iv) W01453's Document was disclosed to all Defence teams on 8 October 2021 and 22 April 2022 under Rule 103.²⁵

17. The Defence responds that: (i) the SPO has failed to establish the *prima facie* relevance and importance of W01453's Document;²⁶ (ii) the SPO had ample opportunity to review the material in its possession and to determine what documents are relevant to the witness;²⁷ (iii) authorising the late addition of documents places an undue burden on the Defence;²⁸ (iv) W01453's Document bears no indicia of authenticity or any indication as to its authorship;²⁹ and (v) the prejudicial nature of some of the information in the document, upon which W01453 is unable to comment, is another factor militating against its admission.³⁰

18. The SPO replies that the Defence relies on arguments that go to the admissibility of W01453's Document, a standard that the Defence concedes does not apply to Exhibit List amendments.³¹

19. Preliminarily, the Panel notes that, in deciding whether to permit the addition of an item to a Party's exhibit list, the Panel need not assess whether the proposed item is admissible.³² The Panel only needs to satisfy itself that the proposed item is *prima facie* relevant and of sufficient importance to justify its late addition.³³ Accordingly, a decision authorising the addition of an item to a Party's exhibit list is without prejudice to the Panel's subsequent decision on whether that item should be admitted in evidence.³⁴ The Defence's arguments regarding the alleged

²⁵ Request, paras 9-10.

²⁶ Response, paras 17-19.

²⁷ Response, paras 21, 24.

²⁸ Response, paras 22-23, 29.

²⁹ Response, para. 25.

³⁰ Response, para. 28.

³¹ Reply, para. 3.

³² Intercepts Decision, para. 11; 8 March 2023 Decision, para. 29.

³³ Intercepts Decision, para. 11; 8 March 2023 Decision, para. 29.

³⁴ Intercepts Decision, para. 11; 8 March 2023 Decision, para. 29.

prejudicial nature and lack of authenticity of W01453's Document are therefore premature and are rejected.³⁵

20. As regards the timeliness of notice, the SPO submits that the specific evidential importance of this item only became apparent in preparing for the examination of W01453.³⁶ The Panel agrees with the Defence's argument that the SPO had ample opportunity to review the material in its possession and to determine what documents are relevant to the witness.³⁷ The Panel is of the view that the request could have been made earlier. This being said, the Panel notes that W01453 is not anticipated to testify in the upcoming block of witnesses and the very earliest he would be called to testify would be [REDACTED].³⁸ Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,³⁹ the Panel considers the notice provided by the SPO in respect of W01453's Document to be timely.

21. As regards good cause and the question of the relevance and importance of W01453's Document, the Panel observes that the item was seized from Mr Krasniqi's residence and contains multiple references to W01453 and his contacts with Mr Krasniqi, Mr Thaçi and Mr Selimi.⁴⁰ In light of the above, contrary to the Defence's submissions,⁴¹ the Panel is satisfied that W01453's Document is *prima facie* relevant and of sufficient importance and that there is good cause for its late addition to the Exhibit List.

22. As regards prejudice, the Panel observes that the original item SPOE00229777-00229840 and the English translation of W01453's Document

³⁵ Response, paras 25, 28.

³⁶ Request, para. 9.

³⁷ Response, paras 21, 24.

³⁸ F02007/A01, Specialist Prosecutor, *Annex 1 to Prosecution Submission of List of Witnesses for 15 January 2024 to 4 April 2024* ("List of Next Witnesses"), confidential, pp. 52-53.

³⁹ See above footnote 20.

⁴⁰ See Request, para. 9; e.g. SPOE00229777-00229802, pp. SPOE00229778-SPOE00229779.

⁴¹ Response, paras 17-19.

(SPOE00229777-SPOE00229802-ET) were disclosed under Rule 103 to all Accused on 8 October 2021 and 22 April 2022, respectively.⁴² The Panel further recalls that the very earliest W01453 would be called to testify would be [REDACTED].⁴³ The Panel is satisfied that the Defence has sufficient time to adequately prepare before W01453's testimony and that the effectiveness of the rights of the Accused will be preserved. In turn, the Panel is also satisfied that, contrary to the Defence's arguments,⁴⁴ no undue prejudice is caused by the addition of W01453's Document to the Exhibit List.

C. KLA DOCUMENTS

23. The SPO submits that the KLA Documents are *prima facie* relevant and of sufficient importance to justify their addition to the Exhibit List.⁴⁵ The SPO also argues that, while the request could have been made earlier, the importance of these documents was identified in the course of witness preparations, and addition to the Exhibit List at this stage would cause no prejudice, given that the requested addition is limited in scope, was disclosed under Rule 102(3) to all Accused on 21 December 2023, and provides the Accused with sufficient notice.⁴⁶

24. The Defence responds that: (i) the request to add the KLA Documents to the Exhibit List is untimely;⁴⁷ (ii) the SPO should not be permitted to add documents to its Exhibit List that relate or are relevant to witnesses that have already come to testify, particularly those documents that could have been added to its exhibit list at a much earlier date;⁴⁸ and (iii) the SPO has failed to provide any reasons

⁴² Disclosure Packages 92, 219.

⁴³ *See above* para. 20.

⁴⁴ Response, paras 22-23, 29.

⁴⁵ Request, para. 11.

⁴⁶ Request, para. 15.

⁴⁷ Response, para. 32.

⁴⁸ Response, para. 33. *See also* Response, paras 34-36.

concerning the relevance and importance of one of the KLA Documents that would justify its late addition.⁴⁹

25. The SPO replies that the Defence fails to show prejudice when arguing that the KLA Documents cannot be added to the Exhibit List.⁵⁰

26. As regards the timeliness of notice, the Panel observes that the KLA Documents were provided by KLA [REDACTED] during his [REDACTED] interview with the SPO on [REDACTED] and were discussed during the interview.⁵¹ The SPO submits that the importance of these documents was identified in the course of witness preparations, and addition to the Exhibit List at this stage would cause no prejudice.⁵² The Panel is of the view that the request could have been made earlier. This being said, the Panel takes into account that none of the witnesses who will be asked to comment on these documents are anticipated to testify in the upcoming block of witnesses.⁵³ Bearing in mind that a certain degree of flexibility must be maintained in the context of a complex multi-accused trial,⁵⁴ the Panel considers the notice provided by the SPO in respect of the KLA Documents to be timely.

27. As regards good cause and the question of the relevance and importance of the KLA Documents, the Panel observes that they appear to be official documents signed by KLA high-ranking officials and issued in 1999.⁵⁵ In light of the above, the Panel is satisfied that, contrary to the Defence's submission,⁵⁶ the KLA Documents are *prima facie* relevant and of sufficient importance such that good cause exists for their late addition to the Exhibit List.

⁴⁹ Response, para. 37.

⁵⁰ Reply, para. 3.

⁵¹ Request, para. 11. *See also* 072632-TR-ET Part 3, pp. 17-23.

⁵² Request, para. 15.

⁵³ *See* List of Next Witnesses.

⁵⁴ *See above* footnote 20.

⁵⁵ Request, paras 12-14.

⁵⁶ Response, para. 37.

28. As regards prejudice, the Panel observes that the KLA Documents are limited in scope and were disclosed under Rule 102(3) to all Accused on 21 December 2023.⁵⁷ With regard to the Defence's argument regarding W04765,⁵⁸ the Panel accepts that W04765 might have been able to comment on the KLA Documents. That said, the Panel notes the SPO's submission that W04764, W04564, and W04752 are also well-positioned to speak about some of the KLA Documents.⁵⁹ The Panel recalls that that none of the relevant witnesses are anticipated to testify in the upcoming block.⁶⁰ The SPO may use the KLA Documents with W04764, W04564, and W04752 as well as other witnesses who testify after the upcoming block, and the Defence will be able to cross-examine those and other relevant witnesses on the KLA Documents. The Panel is therefore satisfied that the Defence has sufficient time to adequately prepare before the relevant witnesses' testimony and that the effectiveness of the rights of the Accused will be preserved. In turn, the Panel is also satisfied that no undue prejudice is caused by the addition of the KLA Documents to the Exhibit List.

D. CONCLUSION

29. For these reasons, the Panel finds that the SPO has provided timely notice, shown good cause for the requested amendment of its Exhibit List, and demonstrated that no prejudice will be caused to the Defence as a result of that amendment. The Panel therefore authorises the addition of the Additional Documents to the SPO's Exhibit List and orders the SPO to file its amended Exhibit List no later than Friday, 15 March 2024.

⁵⁷ Disclosure Package 1051.

⁵⁸ Response, paras 34-36.

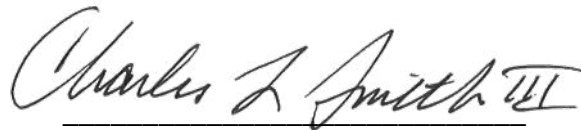
⁵⁹ Request, paras 12, 14.

⁶⁰ *See above* para. 26.

IV. DISPOSITION

30. For the above-mentioned reasons, the Panel hereby:

- a) **GRANTS** the Request;
- b) **GRANTS** the SPO leave to add the Additional Documents⁶¹ to the Exhibit List; and
- c) **ORDERS** the SPO to file its amended Exhibit List no later than **Friday, 15 March 2024**.



Judge Charles L. Smith, III

Presiding Judge

Dated this Thursday, 7 March 2024

At The Hague, the Netherlands.

⁶¹ See above footnote 8.